

TRANSCRIPT OF PROCEEDINGS

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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OCT 14 2014

**Federal Communications Commission
Bureau / Office**

In the Matter of:

Maritime Communications/Land Mobile, LLC

Participant in Auction No. 61 and Licensee of
Various Authorizations in the Wireless Radio
Services

Applicant for Modification of Various
Authorizations in the Wireless Radio Services

EB Docket No. 11-7

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**NEAL R. GROSS & CO., INC.
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:	:	EB Docket No.
	:	11-71
MARITIME COMMUNICATIONS/ LAND MOBILE, LLC	:	File No.
	:	EB-09-IH-1751
Participant in Auction No.	:	
61 and Licensee of Various	:	FRN:
Authorizations in the	:	0013587779
Wireless Radio Services	:	
	:	Application
Applicant for Modification	:	File Nos.
of Various Authorizations in	:	0004030479
the Wireless Radio Services	:	0004144435
	:	0004193028
Applicant with ENCANA OIL	:	0004193328
AND GAS (USA) INC.; DUQUESNE	:	0004354053
LIGHT COMPANY, DCP MIDSTREAM	:	0004309872
LP; JACKSON COUNTY RURAL	:	0004310060
MEMBERSHIP ELECTRIC	:	0004314903
COOPERATIVE; PUGET SOUND	:	0004315013
ENERGY INC.; ENBRIDGE ENERGY	:	0004430505
COMPANY, INC.; INTERSTATE	:	0004417199
POWER AND LIGHT COMPANY;	:	0004419431
WISCONSIN POWER AND LIGHT	:	0004422320
COMPANY; DIXIE ELECTRIC	:	0004422329
MEMBERSHIP CORPORATION;	:	0004507921
ATLAS PIPELINE MID-CONTINENT,	:	0004153701
LLC; AND SOUTHERN CALIFORNIA	:	0004526264
REGIONAL RAIL AUTHORITY	:	and
	:	0004604962
For Commission Consent to	:	
the Assignment of Various	:	
Authorizations in the	:	
Wireless Radio Service	:	

Volume 9
Wednesday,
October 1, 2014

Courtroom TWA-363
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 a.m.

BEFORE:

RICHARD L. SIPPEL,
Chief Administrative Law Judge

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10:04 a.m.

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JUDGE SIPPEL: This is the beginning of our pre-hearing conference in light of some developments we're all well aware of.

Let me take attendance first and I'm interested in -- I guess all lawyers at the table are going to be participating in one sense or another. I mean again there's lawyers that come in and out, and I'm looking for what's going to be the final cast of characters to be -- for the actual hearing.

Let's start with Bureau.

MS. KANE: Pamela Kane for the Enforcement Bureau.

JUDGE SIPPEL: Ms. Kane.

MR. ENGEL: Your Honor, Mike Engel E-N-G-E-L, for the Enforcement Bureau.

JUDGE SIPPEL: Mr. Engel, you're new to this case?

MR. ENGEL: Yes, Your Honor.

JUDGE SIPPEL: Okay.

MR. SHELDON: Jeffrey Sheldon on behalf of Puget Sound Energy.

MR. RICHARDS: Jack Richards, Your Honor. With me, Al Catalano of Keller and Heckman, on behalf of Atlas Pipeline-Mid Continent, LLC; Dixie Electric Membership Corporation, Inc.; Enbridge Energy Company, Inc.; Encana Oil

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1 and Gas (USA), Inc. and Jackson County Rural Membership
2 Electric Cooperative.

3 JUDGE SIPPEL: The list keeps growing.

4 MR. RICHARDS: The list keeps shrinking, in fact.

5 JUDGE SIPPEL: Well, it changes anyway. Some way
6 or the other.

7 Next. Sir. You.

8 MR. CATALANO: I'm with Mr. Richards. I'm Al
9 Catalano.

10 MR. PLACHE: I'm Matthew Plache on behalf of
11 Pinnacle Wireless.

12 MR. COLE: I'm Harry Cole on behalf of Southern
13 California Regional Rail Authority.

14 JUDGE SIPPEL: I didn't think I was going to see
15 you this morning, Mr. Cole.

16 MR. COLE: Well, Your Honor, I'm hoping my opinion
17 here will be short. I just wanted to confirm that the order
18 the Commission issued on September 11th is self-executing and
19 that we are, in fact, removed and that you're not expecting
20 anything more from us.

21 JUDGE SIPPEL: Well, you got to make that train.
22 Oh, that's fine. I mean unless there's any objection or
23 comment or anything like that. You're excused from the case.

24 MR. COLE: Right.

25 JUDGE SIPPEL: You can --

1 MR. STENGER: Well, Your Honor, I'm sorry, Your
2 Honor, to speak out of order.

3 JUDGE SIPPEL: Well, let me have your appearance.

4 MR. STENGER: I'm James Stenger with Chadbourne &
5 Parke.

6 JUDGE SIPPEL: Oh, yes, Mr. Stenger.

7 MR. STENGER: I represent Environmental, LLC. and
8 Verde Systems, LLC.

9 JUDGE SIPPEL: Right.

10 MR. STENGER: And my comment on what was just said
11 about Footnote 7 is that the Commission's order isn't final
12 yet.

13 JUDGE SIPPEL: Well, it might not be final yet, but
14 I can't see Mr. Cole having a role in this matter any further
15 unless there's a reversal of fortune somehow.

16 Are you objecting to my excusing him from the
17 hearing? From the conference?

18 MR. STENGER: Well, if he wants to be excused from
19 the conference, that's a matter for him in terms of his
20 attendance at the conference. He made some remark about
21 proceeding on down the road with the transaction or whatever
22 he was discussing. I didn't fully understand it.

23 But, all I'm saying is the Commission's order isn't
24 final yet. It's subject to reconsideration petitions that are
25 due on October 13th.

1 JUDGE SIPPEL: That's an interesting twist.
2 There's a statutory obligation as far as, you know, furnishing
3 that railroad with adequate communication by a certain day I
4 believe.

5 MR. STENGER: Well, Your Honor, I have studied on
6 this issue because I didn't know that a motion -- if he's
7 making a motion, I didn't know that a motion was going to be
8 made. Perhaps he should make a motion in writing and we can
9 respond to it in due course.

10 I didn't come here really prepared to argue
11 Footnote 7. All I can say off the top of my head is that the
12 -- to the extent that anyone's relying on the Commission's
13 order, it's not a final order at this point.

14 JUDGE SIPPEL: Well, you're correct on that.

15 MR. KELLER: Your Honor, Bob Keller for Maritime.

16 JUDGE SIPPEL: Yes, Mr. Keller.

17 MR. KELLER: The order is not final, but the order
18 is effective and under the Commission's rules the order has
19 full force and affect unless it's stayed. Regardless of
20 reconsiderations or appeals, it's an effective order. Unless
21 it's stayed.

22 MS. KANE: But, Your Honor, the Enforcement Bureau
23 agrees and frankly, we have no issue with Southern California
24 Railroad, you know, being removed from this hearing. The
25 order is plain on its face and I'm not sure that I understand

1 Mr. Stenger's objection because I'm not sure that Mr. Stenger
2 or his clients have any basis to appeal the order before the
3 Commission.

4 JUDGE SIPPEL: Standing --

5 MS. KANE: They don't have standing to appeal that
6 order and unless any other party intends to appeal that
7 particular portion of the order, I don't see why Mr. Cole and
8 his clients can't be removed from the hearing.

9 JUDGE SIPPEL: Mr. Stenger.

10 MR. STENGER: Well, we certainly do have standing
11 to file a petition for reconsideration or an appeal of the
12 order. Any party in interest can do that. We're a party in
13 interest to the order. So, we're cited throughout the order
14 numerous times.

15 So, I mean if people wanted to -- if we file a
16 petition for reconsideration and someone wants to oppose it
17 and say that we didn't have standing to file it, again, that's
18 for briefing down the road.

19 I have no objection to the railroad filing a motion
20 and setting forth a basis for whatever motion they want to
21 make, but I'm not sure if someone's asking for you to make a
22 ruling here from the bench as to the effectiveness or finality
23 of the Commission's order. You know, that was not something
24 that was on the calendar for this morning.

25 JUDGE SIPPEL: No. No, I've been under the

1 impression that it's basically self-executing.

2 But, no, I did not intend to rule from the bench
3 on my reading of the order. It seems to be just plain English
4 and self-executing instruction from the Commission if you want
5 to call it that.

6 I don't see why it has to -- why he even has to
7 take any time on my part. I don't know why I want to take
8 anybody else's time.

9 How can you be harmed by a party leaving the case
10 who's got a statutory obligation to meet? With the
11 Commission's blessing by the way.

12 MR. STENGER: I'm sorry, Your Honor. Again, Your
13 Honor, I didn't really come here prepared to argue that issue.
14 I'd be happy to file a brief on it.

15 I mean in a nutshell, our position would be that
16 the Commission made a mistake in allowing that to go forward.
17 They created a new exception beyond the Second Thursday
18 doctrine. A new exception that doesn't make any sense,
19 doesn't have any boundaries. That allows someone to sell
20 spectrum where they haven't established their basic
21 qualifications as a licensee to hold that spectrum and the
22 railroad is purchasing spectrum at some price from someone who
23 doesn't have the right to -- hasn't established that The
24 Commission's order directed them to show cause why they have
25 basic qualifications to be a licensee. The footnote excuses

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1 them with respect to that spectrum, but not all these other
2 licenses and we think that's a mistake and that --

3 JUDGE SIPPEL: Well, that's the hearing
4 designation. It goes back to the hearing designation.

5 MR. STENGER: Yes, and this --

6 JUDGE SIPPEL: That hasn't been challenged in this
7 case at all. Nobody's challenged it.

8 MR. STENGER: And neither am I. I'm saying that
9 Footnote 7 is an exception to the show cause order that they
10 show cause why all of their licenses should not be revoked.
11 They're going to be allowed to proceed under Footnote 7 and
12 under the Second Thursday decision with this one particular
13 sale, and our position is that they have nothing to sell and
14 we intend to seek reconsideration or appeal that point.

15 We are harmed in obvious terms, Your Honor. If I
16 have spectrum that I can sell the railroad, but they don't
17 have to buy it from me at a fair market price, they can buy
18 it from someone else who has a questionable right to it and
19 they're getting it at a discount, that harms me.

20 JUDGE SIPPEL: It harms you because you might
21 otherwise have a right to get the license down the road.

22 MR. STENGER: Get the license or sell the railroad
23 spectrum that I have under another license, but they're not
24 dealing with me because I want full value for my spectrum.
25 Whereas, they're getting spectrum at a discount because the

1 title to the spectrum is in question.

2 A simple example would be someone selling a stolen
3 car for \$10 instead of buying my car for \$200.

4 JUDGE SIPPEL: And?

5 MR. STENGER: Well, that's how I'm harmed. I'm
6 trying to sell this gentleman a car for \$200 and he's saying
7 I don't need your car. I can buy someone else's stolen car
8 for \$10.

9 JUDGE SIPPEL: Well, isn't that capitalist system?
10 You bid at the highest. You know, it's high/low bids.

11 MR. STENGER: It may be the capitalist system, but
12 it's not the Commission system. In the Commission system, you
13 first have to establish your basic qualifications to hold a
14 license and the Commission put that in issue with the hearing
15 designation order.

16 It said that they shall show cause why their
17 licenses shouldn't be revoked. They have to show their basic
18 qualifications to be the licensee.

19 They sought a broad exception to that under Second
20 Thursday. That was denied.

21 Now, they're here before you and they have to show
22 their basic qualifications.

23 In one narrow area, the Commission said we're not
24 going to require them to show their basic qualifications;
25 we're going to let them go ahead and sell the spectrum to the

1 railroad and we don't agree with that holding. It's not a
2 final order and we intend to appeal it.

3 JUDGE SIPPEL: Well, I'm not altogether following
4 your reasoning to its logical conclusion.

5 You're on notice. All the parties were on notice
6 from the outset in Footnote 7 of the, you know, the different
7 situation that the railroad was placed in and it was by virtue
8 of an Act of Congress.

9 If Congress passed a law saying that -- well, that
10 Congress can -- this has happened to me. They revoked a
11 decision on qualifications of an applicant after about four
12 years of litigation because they seem to have the political
13 wherewithal to get it through Congress, a bill, one single
14 bill for one single purpose to grant the licenses that had
15 been denied by myself and all the way up to the Court of
16 Appeals. Tough.

17 MR. COLE: Your Honor.

18 JUDGE SIPPEL: Yes.

19 MR. COLE: If I may be heard. Thank you.

20 JUDGE SIPPEL: Yes, sir.

21 MR. COLE: The fact of the matter is, as Mr. Keller
22 pointed out, that the order is effective. The order is a
23 Commission order on which Your Honor with all due respect has
24 no jurisdiction and the Commission has made the determination
25 that SCRA is to be removed and if Mr. Havens or Mr. Stenger

1 or anybody else has a problem with that, they need to take it
2 to the Commission not to you.

3 And until and unless they get a stay of the
4 effectiveness of this decision, it remains effective. The
5 SCRA application has been removed from the hearing and the
6 Wireless Bureau will proceed with the processing of that
7 application. Which is what the Commission has ordered in the
8 decision.

9 So, I think that at this point there really is very
10 little for us here in this room to discuss about this. The
11 Commission has acted. The instructions are clear. If
12 somebody disputes that, they can take it up with the
13 Commission, but not with you.

14 JUDGE SIPPEL: Well, I think that's as well put as
15 anything I've heard this morning.

16 I was just having an interesting discussion about
17 -- but, you're right. I have no business with this. I can
18 read English. It's self-executing. Thus, the Commission has
19 spoken.

20 Unless somebody does something to change what this
21 Commission has said, there's nothing I can do about it anyway.

22 So, but I don't have to -- I don't have to order
23 a dismissal of a party that's been already let out by the
24 Commission. You know, you've gotten the ruling and I'm not
25 going to force you to stay here any longer, but I mean it's

1 nice to have you. But, it's -- yes, sir, Mr. Richards.

2 MR. RICHARDS: Your Honor, on behalf of the oil and
3 gas companies, the electric utilities we represent, we have
4 no problem with the removal of the railroad from the hearing.

5 But, in regard to your comment that no one
6 challenged the hearing designation order and I don't think it
7 was directed towards us, it was in the context of something
8 else, we did challenge the Footnote 7 to the extent that we
9 see no difference between the oil and gas companies and the
10 electric utilities public safety need for this spectrum than
11 the railroads.

12 We support the railroads. We think the oil and gas
13 companies and electric utilities are in the same boat. So,
14 the removal of the railroads is fine with us.

15 I did want to comment. We did contest the Footnote
16 7 in our petition for reconsideration. The Commission
17 disagreed with that in the order and as the gentleman
18 explained the petition for your consideration period doesn't
19 expire -- he said October 13th. We counted October 14, but
20 it's going to be awhile and the 60 days for the court appeal
21 goes to mid-November.

22 JUDGE SIPPEL: Thus is the situation. I have
23 nothing more to add. Nothing more to add at all. Anybody
24 else? No.

25 MR. COLE: Well, Your Honor, absent any reversal

1 down the line, you won't be seeing us again. But, I've
2 enjoyed my stay here.

3 JUDGE SIPPEL: A mixed blessing, Mr. Cole.

4 MR. COLE: Thank you, Your Honor.

5 JUDGE SIPPEL: Thank you very much. You're
6 excused.

7 MR. COLE: Thank you.

8 JUDGE SIPPEL: Okay. So, the first thing I want
9 to --

10 MR. KIRK: Your Honor.

11 JUDGE SIPPEL: Yes.

12 MR. KIRK: Before you move forward, I haven't
13 introduced myself yet. I'm Bob Kirk here on behalf of Choctaw
14 Communications.

15 I'm not at the table because I've got a limited
16 role regarding our applications that are still pending before
17 the Commission.

18 But I'm happy to update you sort of on the status
19 in our position on the ruling on Second Thursday.

20 JUDGE SIPPEL: My fault. I recognize you, but I
21 didn't think you were at the table. So, Mr. Kirk, welcome.

22 MR. KIRK: Thank you.

23 JUDGE SIPPEL: Okay. We'll get to that at the
24 proper time.

25 Now, well, the first order of business having taken

1 care of that is that I am going -- I'm directing that the stay
2 -- the stay on the other aspects of the proceeding besides
3 Issue (g) -- is hereby lifted and there will be an appropriate
4 order coming out in the next 24 hours to that effect.

5 MR. KIRK: Your Honor.

6 JUDGE SIPPEL: Yes.

7 MR. KIRK: If I may, Choctaw plans on filing a
8 petition for reconsideration of the Second Thursday ruling.

9 It was premised on Mr. DePriest being relieved of
10 secondary liability and therefore, receiving a benefit.

11 There are footnotes in the order that says where
12 the party being relieved of secondary liability is judgment
13 proof. Then there is no benefit.

14 In our petition for reconsideration, we'll
15 demonstrate that Mr. DePriest is judgment proof. So,
16 therefore, the premise of the order is factually incorrect and
17 we believe that will lead to that order being changed on
18 reconsideration.

19 Therefore, we'd urge you to keep the stay in place
20 rather than restart it and stop.

21 JUDGE SIPPEL: Another interesting twist. The
22 Bureau.

23 MS. KANE: Well, Your Honor, I mean at this point,
24 we see a couple of different options. We could go forward
25 with the Issue (g) hearing as scheduled. Obviously, you know,

1 most of the parties are ready and up to speed and we're about
2 six weeks out, maybe two months out from the trial date.

3 We could continue with discovery now that you've
4 looked at the stay and should you continue to proceed in that
5 regard. You could lift the stay on all of the other issues
6 and we could proceed with discovery -- however long that might
7 take -- on the additional six or eight issues that are in play
8 and go to a hearing on all issues at the same time.

9 Or have a hearing just on the issues (a) through
10 (f), which deal directly with the qualifications issue at
11 play.

12 Of all of those three issues, the Bureau would
13 prefer not to do them together. I think that would be too
14 confusing given the position that the Bureau has taken on the
15 16 licenses at issue and the other issues at play.

16 You know, obviously, the Bureau has an interest in
17 having these issues resolved quickly and this has now been
18 pending for multiple years on the qualification issue and if
19 the Judge is inclined to direct that the stay is lifted, the
20 Bureau is happy to proceed on that regard and to begin
21 discovery on that regard. But we wouldn't want to do that at
22 the same time that we were going to hearing.

23 So, if in fact the Judge is going to lift the stay
24 and we're going to proceed with discovery, then we would
25 request that we move the hearing date and have a hearing on

1 Issue (g) at a later time or coordinate it so that the
2 discovery on the other issues proceeds after the December
3 hearing on Issue (g). But, not to do them concurrently.

4 I think it's going to put a tremendous amount of
5 burden on both the Bureau and its ability to obtain discovery
6 from other parties as they're preparing for the hearing.

7 JUDGE SIPPEL: Yes.

8 MR. KELLER: Your Honor, for Maritime.

9 JUDGE SIPPEL: Mr. Keller.

10 MR. KELLER: We would advocate that we proceed with
11 the hearing on Issue (g). We would ask you to defer your
12 decision to left the stay pending reconsideration.

13 As Mr. Kirk mentioned, Choctaw will be filing a
14 reconsideration petition. Maritime will also be filing a
15 petition for reconsideration which will, we believe,
16 conclusively demonstrate that the factual basis underlying the
17 ruling is inaccurate. That Mr. DePriest is, in fact, judgment
18 proof, is unable to honor the guarantees and therefore, will
19 not be benefitted by denial of Second Thursday -- by a grant
20 of Second Thursday. Will be harmed by denial of it and it's
21 a moot point and we would certainly ask the Commission for a
22 stay at that time.

23 In the Commission's order, I don't have a copy of
24 it with me here, but the particular paragraph, the Commission
25 even mentioned -- after they discussed everything else, after

1 they discussed Second Thursday and issued Footnote 7, the
2 Commission went on to point out in addressing a request by
3 Choctaw for a waiver of the Issue (g) matter pointing out that
4 the parties expended a lot of time and effort litigating and
5 preparing this issue. It had been simplified. They
6 understood it was now nearing resolution and they were not
7 going to rule on a waiver request right now before the Judge
8 had a chance to rule.

9 So, even the Commission anticipates that separate
10 and apart from any Second Thursday or basic qualifications
11 issues that Issue (g) is near resolution and parties have done
12 a lot of work to narrow the issues down.

13 We've got it narrowed down to just 16 sites.
14 You've already issued a summary decision on the construction
15 aspect of Issue (g). Direct case exhibits are in. We're
16 ready to go.

17 So, it would seem to me we could proceed with the
18 hearing on Issue (g) as scheduled. It's going to be resolved
19 and it's going to be done within the next few months and then
20 at that point, we can see where we are with the Commission
21 reconsideration and we can take up the issue about where to
22 go with the basic qualifications' issue at that time and that
23 would seem to be consistent with the Bureau's position that
24 they wouldn't want to try these things together if at all
25 possible.

1 It seems like we're already teed up to do Issue (g)
2 to get it done in the next several weeks and we ought to just
3 do it and then we can turn our attention to where we stand on
4 the other.

5 JUDGE SIPPEL: Let me ask. I'm going to get to you
6 Mr. Stenger. I think Mr. Havens, your pro counsel, is on the
7 phone.

8 MR. STENGER: Your Honor, may I -- Mr. Havens is
9 expecting me to take the lead on this. So, if I may say, Your
10 Honor, you just made a ruling --

11 JUDGE SIPPEL: Well, I'm going to see if Mr. Havens
12 agrees with that. Sometimes he doesn't agree with counsel.
13 Mr. Havens.

14 MR. HAVENS: Yes, Your Honor. Did you ask me a
15 question?

16 JUDGE SIPPEL: I did, sir. Is Mr. Stenger going
17 to take the lead this morning?

18 MR. HAVENS: Well, he has been taking the lead and
19 I anticipated he would continue to do so. I don't have -- I
20 don't believe I will have any views contrary to Mr. Stenger's.
21 I might have some additional comments.

22 JUDGE SIPPEL: Well, that's --

23 MR. HAVENS: So, I -- and I have some notes I've
24 been making, but I'm -- I think it might be more efficient for
25 Mr. Stenger to proceed and then later on, if I believe there's

1 something in addition I might say or if he has any questions
2 of me, then I'd be happy to talk about that.

3 JUDGE SIPPEL: Well, that's not the declaratory
4 statement that Mr. Stenger made, but I'll take what I get
5 here.

6 By the way, I'm just also giving you the
7 opportunity to notice your appearance, sir.

8 MR. HAVENS: Well, thank you. I'm appearing.

9 JUDGE SIPPEL: For yourself.

10 MR. HAVENS: Yes, I am.

11 JUDGE SIPPEL: Okay. Okay. Mr. Stenger.

12 MR. STENGER: Your Honor, if I may, Your Honor just
13 ruled in excusing the railroad that the Commission's --

14 JUDGE SIPPEL: I excused them from the conference.

15 MR. STENGER: Excusing them from the conference.

16 JUDGE SIPPEL: I'm saying that the Commission's
17 order is self-executing.

18 MR. STENGER: The Commission --

19 JUDGE SIPPEL: That's my interpretation and he can
20 go. That's all I did.

21 MR. STENGER: The Commission's -- you recognized
22 that the Commission's order is self-executing and by that same
23 token, Your Honor, the Commission's order is self-executing
24 with regard to the fact that Maritime needs to proceed with
25 a hearing on their basic qualifications. The fact that they

1 are going to file a reconsideration petition that they hope
2 is going to one day be granted, I've seen reconsideration
3 petitions sit at the Commission for many years. The same
4 thing with Court of Appeals and that's no reason to hold up
5 proceeding on the hearing on their basic qualifications.

6 They were ordered to show cause as to their basic
7 qualifications and they were supposed to show cause as to
8 their basic qualifications for every license on Attachment A
9 to the hearing designation order.

10 JUDGE SIPPEL: Um-hum. Yes, sir.

11 MR. STENGER: The licenses that are at issue in
12 this proceeding -- Number 6 is KAE889, Number 60 is WHG750 and
13 Number 71 is WRV374. So, all 16 sites that are on those three
14 licenses, they've been ordered to show cause as to their basic
15 qualifications and the fact that they are going to seek
16 reconsideration of the denial of Second Thursday is no reason
17 for Your Honor not to lift the stay.

18 Our position is that you should lift the stay and
19 that you should proceed with the hearing on their basic
20 qualifications and that that is the primary issue under the
21 hearing designation order and that they are not entitled to
22 have a hearing on construction and operation until they first
23 establish their basic qualifications.

24 With the Second Thursday decision being set aside
25 in this case, we're back to Jefferson Radio and Jefferson

1 Radio says you can't proceed with an assignment application
2 until you establish your basic qualifications and by the same
3 token, our position -- and again, we haven't seen any brief
4 from the Bureau supporting what they're saying here.

5 Again, Your Honor, I'm not asking Your Honor to
6 rule from the bench. I'm asking that if they're going to take
7 this position and Mr. Kirk and Mr. Keller are going to take
8 this position, then let's brief it.

9 I'm prepared to brief the issue and show, Your
10 Honor, that you cannot proceed with a hearing on construction
11 and operation when your basic qualifications have not been
12 established. You have to establish your basic qualifications
13 as a licensee first and the notion that we would proceed into
14 this hearing, Your Honor may spend time and we may all spend
15 time and money and they may prove that they have 10,000
16 customers on all three of these stations, but that will become
17 irrelevant if they are found not to be qualified to hold the
18 licenses.

19 So, why should we devote time and effort to a
20 hearing on construction and operation or even operation when
21 their basic qualifications are at issue.

22 The only excuse that I've heard is that they're
23 going to appeal or seek reconsideration of the order, but as
24 Your Honor has remarked earlier, the order is self-executing
25 and so, the stay needs to be lifted and we need to proceed